

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 7, 2022
EFFECTIVE DATE July 8, 2022

CASE NO(S): OLT-22-002501

PROCEEDING COMMENCED UNDER subsection 34.1(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Applicant and Appellant: Burgess Heritage Group Inc.
Subject: Demolition of a building or structure on property designated pursuant to s. 29 of the OHA
Property Address/Description: 133 Main Street
Municipality: Town of Grimsby
Approval Authority File No.: HG 22-01
OLT Case No.: OLT-22-002501
OLT Lead Case No.: OLT-22-002501
OLT Case Name: Burgess Heritage Group Inc. v. Grimsby (Town)

PROCEEDING COMMENCED UNDER subsection 34.1(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Applicant and Appellant: Burgess Heritage Group Inc.
Subject: Alteration on property designated pursuant to s. 29 of the OHA
Property Address/Description: 133 Main Street
Municipality: Town of Grimsby
Approval Authority File No.: HG 22-01
OLT Case No.: OLT-22-02541
OLT Lead Case No.: OLT-22-02501

Heard: July 8, 2022 by video hearing

APPEARANCES:**Parties****Counsel**

Town of Grimsby

M. Barrett

Burgess Heritage Group Inc.

J. Shapira

MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN COOKE ON JULY 8, 2022, AND ORDER OF THE TRIBUNAL

[1] The matter before the Tribunal was a settlement hearing for the appeals under s. 34.1(1) and s. 33(9) of the *Ontario Heritage Act* (“OHA”), R.S.O. 1990, c. O.18, as amended, for the applications by Burgess Heritage Group Inc. (“Applicant”) for the demolition of a building or structure, and alterations to a property designated pursuant to s. 29 of the OHA for the property municipally known as 133 Main Street (“Subject Site”) in the Town of Grimsby (“Town”).

[2] The Subject Site is also subject to appeals for Official Plan Amendments and Zoning By-law Amendments under the *Planning Act*; however, the proposed settlement and decision of the Tribunal is to be considered without prejudice to these related *Planning Act* appeals.

HERITAGE ACT EVIDENCE

[3] The Tribunal marked as Exhibit 2 the Affidavit of Kelly Gilbride. Ms. Gilbride appeared before the Tribunal to provide expert opinion evidence in Heritage matters. Hearing no concerns from the parties the Tribunal qualified Ms. Gilbride.

[4] Ms. Gilbride informed the Tribunal that she was originally retained by the Applicant to prepare a Conservation Master Plan (“CMP”) to support the proposed development of a new mixed-use condominium on the Subject Site.

[5] The Subject Site is located on the northeast corner of Main Street and Nelles Road. In December of 2012, Town Council passed a Designation By-law No. 12-79 (“DBL”) to:

designate the James Willison Grout Nelles House 133 Main Street East as a feature of historical, architectural and/or contextual significance.

[6] According to Ms. Gilbride’s affidavit, Town Council listed the following heritage attributes within the DBL:

- The envelope of the original dwelling;
- Brickwork including tuck pointing, textural elements and corbels;
- Stone masonry including decorative corbels;
- Bay windows;
- Eave brackets;
- Gingerbreading bargeboard;
- Drop finials;
- Stick style half timbers on the front gables;
- Windows with transoms;
- Two leafed front door with glazing;
- Side door with stained glass and stained glass transom; and
- The largest mature tree located at the south west corner of the property

[7] Ms. Gilbride noted that the tree identified as a heritage attribute was damaged during a storm in June 2021 and for safety reasons had to be removed.

[8] The Tribunal was informed by Ms. Gilbride that the Subject Site has two existing buildings located on the property. A residential building that is locally known as the historic “Nelles House” and a second building structure that was described to the Tribunal as a contemporary brick coach house. The Applicant intends to restore, repair, and conserve the “Nelles House” but is seeking consent from the Town to alter the building use for commercial purposes. The Applicant requested that a portion of the designated Subject Site permit a condominium building. The Applicant is also seeking consent from the Town to demolish the brick coach house.

[9] Town staff in it’s report to Town Council made recommendation for the Heritage Applications in support of the heritage permits. At the direction of Council, the Town issued Heritage Permit H.R. 22-01 on February 8, 2022 with the following conditions for approval:

- 1) That the cultural heritage resource identified on the subject site be conserved, and that the integrity of the structure be maintained;
- 2) The demolition of the coach house and modern front porch as they have been deemed to be a non-contributing heritage resource that do not merit protection under the *Ontario Heritage Act*;
- 3) That assessments of the flat roofs be conducted and the necessary permanent repairs/replacements be made to prevent further deterioration to the heritage resource, and that the deteriorated modern front porch be removed to prevent further damage to the remaining original fabric;
- 4) That the materials from the coach house be salvaged and/or offered to salvage companies to avoid materials going into the landfill. Should any of the materials be appropriate for the conservation of the heritage building at 133 Main Street East, that they be reused to the greatest extent possible;
- 5) That the new front porch be constructed as presented within the provided renderings and that efforts be made to ensure distinguishability between the original fabric and the new fabric of the replica porch on the front façade;
- 6) That the exterior restoration of the house be completed in accordance with the Ontario Heritage Act, as outlined within the restoration plans prepared by the qualified heritage consultant, and that the prescribed work be conducted by qualified heritage tradespeople;
- 7) That access be provided to heritage professionals on staff to perform regular observations of all vibration and crack monitoring devices as well as overall observation of the subject site. Staff will reference best practices and property standards during these observations;
- 8) That the provided cross-section of the proposed foundation work/underpinning be updated to include a breakdown of materials and that it be presented within detailed specifications addressing mortar mixed and expansion joints;
- 9) That the original side porch, which has been dismantled and put in storage, be reinstalled to the greatest extent possible and that as much of the viable original material be incorporated, with required replacements made with in-kind materials, and that efforts be made to ensure original fabric is distinguishable from newer replacement fabric, and that any Ontario Building Code update be made in accordance with best practice;
- 10) That if any bricks are replaced during the restoration it is recommended that the salvaged bricks from the modern coach house be reused, and that efforts be made to ensure the strength of the replacement bricks be as close to the original fabric as possible, and that they be paired with compatible soft mortar mix;
- 11) That the heritage commemoration be incorporated into the greenspace in front of the heritage resource, and that the removed European Beech tree and history of the structure can be commemorated through interpretive plaques;
- 12) That the greenspace be used for re-introducing interpretive plantings and native species that contribute to the streetscape, as well as the replanting of a European Beech Tree, as outlined by the Heritage Landscape Architect;

13) That vegetative screening be added to the subject site in areas where there is potential for visual impacts to the Council identified cultural heritage landscape along the Main Street East corridor, and that the vegetative screening include trees found within the Carolinian forest in an effort to maintain and enhance the Carolinian forest species found throughout the Town of Grimsby;

14) That securities be taken for the restoration of the heritage resource to ensure that the utmost care is taken during the proposed works on and around the heritage resource and for any potential damages caused to the resource during construction;

15) That a temporary protection plan be submitted during the site plan phase of the development application and that it be in accordance with best practices and completed to the satisfaction of the Director of Planning; and

16) That any construction be designed and positioned on the lot to be preserve the integrity of the home, and maintain sightlines to the heritage resource; and

17) That the commercial setback be taken into consideration at the south eastern portion of the lot during the urban design review panel to ensure the viability of the use and to promote accessibility to the general public. (underline added)

[10] The Tribunal was informed that the Applicant did not have any issues with the first 15 conditions but appealed the decision of the heritage permit by Town Council over concerns related only to conditions 16 and 17.

[11] Through the spring of 2022, the Applicant and Town staff have continued to have productive discussions related to the Subject Site heritage matters that ultimately led to the Town Council giving staff settlement instructions on May 22, 2022 to revise conditions 16 and 17 to state:

16) That new construction be designed and positioned on the lot as proposed within the plan entitled Preliminary Site Plan for Zoning Amendment – Submitted by IBI Group - Revision #3, dated 2021-09-15.

17) That the barrier around the “ramp down to underground parking” consist of materials that minimize the visual impact on the heritage features from the public realm.

[12] It is the expert opinion of Ms. Gilbride that the settlement revised wording of conditions 16 and 17 is appropriate. Conditions No.16 and 17 are consistent with the guidelines and recommendations based on a comprehensive assessment of the heritage attributes of the Subject Site found in the CMP.

[13] She further testified that the revised conditions No. 16 and 17, along with the other 15 listed heritage permit conditions, will ensure that the Nelles House will be conserved and reused as part of the proposed development of the Subject Site. It is her opinion that doing so is consistent with the heritage goals and objectives of the Provincial Policy Statement, 2020.

ORDER

[14] **THE TRIBUNAL ORDERS** that in accordance with subsections 33(11) and 34.1(5) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended:

- a. The appeals by Burgess Heritage Group Inc. under subsections 33(9) and 34.1(1) of the *Ontario Heritage Act* are allowed;
- b. At its next meeting, the Council of the Town of Grimsby consent to revising the conditions of approval enumerated in the Town of Grimsby Heritage Permit (H.R. 22-01), dated February 8, 2022, by deleting Conditions 16 and 17 and replacing them with the following Conditions 16 and 17:
 - i. 16. That new construction be designed and positioned on the lot as proposed within the plan entitled Preliminary Site Plan for Zoning Amendment – Submitted by IBI Group - Revision No. 3, dated 2021-09-15.
 - ii. 17. That the barrier around the “ramp down to underground parking” consist of materials that minimize the visual impact on the heritage features from the public realm.

[15] In all other respects, the appeals are dismissed; and

[16] This Order is without prejudice to the rights of the parties in respect of the appeals of the applications for the Official Plan Amendment bearing municipal reference number 26OP-16-1901 and the Zoning By-law Amendment bearing municipal reference

number 26Z-16-1904 (“Remaining Appeals”), including but not limited to positions taken by the parties, such that no party shall be permitted to take the position that the Ontario Land Tribunal ought to allow or deny the Remaining Appeals, in whole or in part, on the basis that they are consistent or inconsistent with the revisions to Conditions 16 and 17 set out in paragraph 14(b) of this Order. However, neither this provision nor anything in this Order will affect the parties’ rights to (i) raise the fact of the heritage permits as having been granted / consented to by the Town subject to certain Conditions, or (ii) assert that the Remaining Appeals ought to be allowed or denied on the basis that doing so is consistent with a statute, provincial policies, provincial plans, municipal plans and by-laws, constitutes good planning, and/or any other legal argument with the exception of the one expressly prohibited in this paragraph.

[17] Pursuant to Rule 24.3 of the Tribunal’s *Rules of Practice and Procedure*, this Order shall be, and was, effective as of the date of the hearing of this Appeal, and the delivery of the Oral Decision and Order of the Tribunal, on **Friday, July 8, 2022**.

“Steven Cooke”

STEVEN COOKE
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.